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OPEN MEETING ITEM

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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WILLIAM A. MUNDAY, Arizona Corporation Commission
COMMISSIONER

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: December 18, 2000

DOCKET NO.: T-03768A-99-0443

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Opinion and Order on:

REFLEX COMMUNICATIONS, INC.
(CC&N/FACILITIES BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 29, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 9, 2001 and JANUARY 10, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 WILLIAM A. MUNDELL
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
7 REFLEX COMMUNICATIONS, INC. FOR A
8 CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE FACILITIES-BASED
10 AND RESOLD LOCAL EXCHANGE,
11 EXCHANGE ACCESS, AND INTEREXCHANGE
12 TELECOMMUNICATIONS SERVICES AND
13 PETITION FOR COMPETITIVE
14 CLASSIFICATION OF PROPOSED SERVICES

DOCKET NO. T-03768A-99-0443

15 DECISION NO. _____

16 **OPINION AND ORDER**

17 DATE OF HEARING: September 7, 2000

18 PLACE OF HEARING: Phoenix, Arizona

19 ADMINISTRATIVE LAW JUDGE: Stephen Gibelli

20 APPEARANCES: Mr. Paul B. Hudson, SWIDLER BERLIN SHEREFF
21 FRIEDMAN, LLP, on behalf of ReFlex Network, Inc.;

22 Mr. Robert Metli, Staff Attorney, Legal Division, on
23 behalf of the Utilities Division of the Arizona
24 Corporation Commission.

25 **BY THE COMMISSION:**

26 Having considered the entire record herein and being fully advised in the premises, the
27 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

28 **FINDINGS OF FACT**

1. ReFlex Communications, Inc. ("Applicant" or "ReFlex") is a Washington corporation,
authorized to do business in Arizona since 1999.

2. On August 4, 1999, ReFlex submitted to Docket Control of the Arizona Corporation
Commission ("Commission") an application for a Certificate of Convenience and Necessity
("Certificate") to provide competitive facilities-based and resold local exchange, exchange access,
and interexchange telecommunications services in Arizona.

3. On June 19, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff
Report, which recommended approval of the application and included a number of additional

1 recommendations.

2 4. On July 20, 2000, Qwest Corporation ("Qwest") filed a Motion for Leave to Intervene.

3 5. On August 21, 2000, Applicant filed Affidavits of Publication indicating that ReFlex
4 published notice of the application.

5 6. On August 29, 2000, by Procedural Order, Qwest was granted intervention.

6 7. On August 29, 2000, Qwest filed a Request for Withdrawal.

7 8. Pursuant to the July 7, 2000 Procedural Order, a hearing was held on September 7,
8 2000, and Applicant and Staff presented evidence.

9 9. Qwest and ReFlex have not as yet reached an interconnection agreement.

10 10. The management of ReFlex has many years of experience in the telecommunications
11 industry.

12 11. Applicant has the technical capability to provide the services that are proposed in its
13 application.

14 12. Currently there are several incumbent providers of local exchange, toll, and exchange
15 access services in the service territory requested by Applicant, and at least twelve other entities have
16 been authorized to provide competitive local exchange services in all or portions of that territory.

17 13. It is appropriate to classify all of Applicant's authorized services as competitive.

18 14. The Staff Report stated that Applicant has no market power and the reasonableness of
19 its rates would be evaluated in a market with numerous competitors.

20 15. According to Staff, ReFlex has submitted unaudited financial statements for the five
21 months ended May 31, 1999. These statements list total assets of \$10.97 million, negative retained
22 earnings of \$1.32 million, and total equity of \$10.31 million. Based on the financial information
23 provided, Staff believes that ReFlex lacks sufficient financial strength to offer telecommunications
24 services in Arizona.

25 16. Staff recommended that ReFlex's application for a Certificate to provide competitive
26 resold and facilities-based local exchange, exchange access, and interexchange telecommunications
27 services be granted subject to the following conditions:
28

- (a) That ReFlex be required to abide by the additional financial requirements of the Staff Report which require the Applicant to procure a performance bond equal to a minimum of 120 days intrastate revenue as well as any prepayments or deposits collected from the Company's customers;
- (b) That ReFlex be required to file its proposed tariffs at least 30 days prior to the provision of service, or within 30 days of a Decision in this matter, whichever is sooner;
- (c) That, unless it provides services solely through the use of its own facilities, ReFlex procure an Interconnection Agreement before being allowed to offer local exchange service;
- (d) That ReFlex file with the Commission its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases within 30 days of an Order in this matter;
- (e) That ReFlex pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws, and federal rules;
- (f) That ReFlex agree to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. R-0000-95-0498);
- (g) That ReFlex abide by the quality of service standards that were approved by the Commission for U S WEST in Docket No. T-01051B-93-0183;
- (h) That in areas where ReFlex is the sole provider of local exchange service facilities, ReFlex provide customers with access to alternative providers of service pursuant to the provisions of Commission rules, federal laws, and federal rules;
- (i) That ReFlex be required to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 30 days of an Order in this matter;
- (j) That ReFlex be required to abide by all the Commission decisions and policies regarding CLASS services;
- (k) That ReFlex be required to comply with A.A.C. R14-2-1111, which requires local exchange companies provide 2-PIC equal access;
- (l) That ReFlex be required to certify that all notification requirements have been completed prior to a final determination in this proceeding;
- (m) That ReFlex be required to notify the Commission immediately upon changes to ReFlex's address or telephone number; and,
- (n) That ReFlex be required to abide by all Commission rules and regulations.

17. At the hearing, ReFlex agreed to abide by all of Staff's recommendations.

18. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion

1 in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of
2 the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all
3 public service corporations in Arizona prior to setting their rates and charges."

4 19. On October 26, 2000, the Commission filed a Petition for Review to the Supreme
5 Court. However, at this time we are going to request FVRB information to insure compliance with
6 the Constitution should the ultimate decision of the Supreme Court affirm the Court's interpretation
7 of Section 14. We also are concerned that the cost and complexity of FVRB determinations must not
8 offend the Telecommunications Act of 1996.

9 20. On September 25, 2000 a Procedural Order was issued requiring ReFlex to file FVRB
10 information.

11 21. On October 26, 2000 ReFlex filed a Response indicating that its FVRB was zero, but
12 that it was willing to update its FVRB information prior to offering intrastate telecommunications
13 services in Arizona.

14 22. On November 29, 2000 Staff filed its FVRB comments indicating that the information
15 ReFlex filed on October 26, 2000 is insufficient and recommends that the Company provide more
16 detailed information if ReFlex wishes to have permanent rates set in this proceeding or, in the
17 alternative, that ReFlex's tariffs in this matter be reviewed and approved on an interim basis.

18 CONCLUSIONS OF LAW

19 1. Applicant is a public service corporation within the meaning of Article XV of the
20 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over Applicant and the subject matter of the
22 application.

23 3. Notice of the application was given in accordance with the law.

24 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
25 Certificate to provide competitive telecommunications services.

26 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised
27 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
28 in its application.

6. With the conditions stated below, ReFlex is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based and resold local exchange, exchange access, and interexchange telecommunications services in Arizona.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges which are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations in Findings of Fact No. 16, with the exception of recommendation 16 (b), are reasonable and should be adopted, in addition to further orders below.

ORDER

IT IS THEREFORE ORDERED that the Application of ReFlex Communications, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange, exchange access, and interexchange telecommunications services in Arizona shall be, and is hereby, granted, as conditioned below.

IT IS FURTHER ORDERED that prior to providing service ReFlex Communications, Inc. shall comply with all of the Staff recommendations set forth in Findings of Fact No. 16 with the exception of the tariff filing time set forth in recommendation 16 (b). ReFlex Communications, Inc. shall file its tariffs with the Commission at least 30 days prior to providing service.

IT IS FURTHER ORDERED that ReFlex Communications, Inc. shall file the following FVRB information within 18 months of the date that it first provides service. The FVRB shall include a dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by ReFlex following certification, adjusted to reflect the maximum rates that ReFlex requests in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit. ReFlex shall also file FVRB information detailing the total actual operating expenses for the first twelve months of telecommunications service provided to Arizona customers by

1 ReFlex following certification. ReFlex shall also file FVRB information which includes a
2 description and value of all assets, including plant, equipment, and office supplies, to be used to
3 provide telecommunications service to Arizona customers for the first twelve months following
4 ReFlex's certification.

5 IT IS FURTHER ORDERED that ReFlex Communications, Inc. shall procure a performance
6 bond equal to 120 days intrastate telecommunications revenue as well as any prepayments, advances,
7 or deposits. If in the future, ReFlex desires to discontinue the performance bond, or begin charging
8 its customers prepayments, advances, or deposits, it must file information with Staff that
9 demonstrates ReFlex's financial viability. Staff will then review the information and provide ReFlex
10 its decision concerning financial viability within 30 days of receipt of the information.

11 IT IS FURTHER ORDERED that ReFlex Communications, Inc. shall file proof of said
12 performance bond with the Utilities Division Director at least 30 days prior to the provision of
13 service.

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1 IT IS FURTHER ORDERED that if ReFlex Communications, Inc. desires to discontinue
2 service, it must file an application with the Commission and notify each of its customers and the
3 Commission 60 days prior to filing said application. Failure to meet this requirement will result in
4 the forfeiture of ReFlex's performance bond.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2001.

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17 BRIAN C. McNEIL
18 EXECUTIVE SECRETARY

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DISSENT _____
SG:bbs

1 SERVICE LIST FOR: REFLEX COMMUNICATIONS, INC.

2 DOCKET NO.: T-03768A-99-0443

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